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2010 REGULAR SESSION

HOUSE BILL NO. 233

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TREY GRAYSON

SECRETARY OF STATE

COMMONWEALTH OF KENTUCKY

BY R. Adair

AN ACT relating to insurance licensing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 304.9-020 is amended to read as follows:

As used in this subtitle:

(1) "Agent" means a person who sells, solicits, or negotiates~~[an individual or business entity appointed by an insurer to sell or to solicit applications for insurance or annuity contracts or to negotiate]~~ insurance or annuity contracts~~[on its behalf];~~

(2) "Appointment" means a notification filed with the insurance office that an insurer has established an agency relationship with a producer;

(3) "Appointment renewal" means continuation of an insurer's existing appointment based on payment of the required fee without submission of an appointment form;

(4) "Apprentice adjuster" means an individual who meets the qualification requirements to hold a license as an independent, staff, or public adjuster, except for the experience, education, and training requirements;

(5) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity;

(6) "Catastrophe" means an event that results in a declaration of emergency by the Governor pursuant to KRS 39A.100 and:

(a) A large number of deaths or injuries;

(b) Extensive damage or destruction of facilities that provide and sustain human needs;

(c) An overwhelming demand on state and local response resources and mechanisms;

(d) A severe long-term effect on general economic activity; or

(e) A severe effect on state, local, and private sector capabilities to begin and sustain response activities;

1 ~~(7)~~~~(5)~~ "Crop insurance" means insurance providing protection against damage to
 2 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect
 3 infestation, disease, or other yield-reducing conditions or perils provided by the
 4 private insurance market or that is subsidized by the Federal Crop Insurance
 5 Corporation, including multi-peril crop insurance;

6 ~~(8)~~~~(6)~~ "Home state" means the District of Columbia and any state or territory of the
 7 United States in which a licensee maintains his or her principal place of residence or
 8 principal place of business and is licensed by that state;

9 **(9) "Independent adjuster" means a person who:**

10 **(a) Is an independent contractor, an employee of an independent contractor, or**
 11 **for tax purposes is treated as an independent contractor under Subtitle C of**
 12 **the Internal Revenue Code, 26 U.S.C. secs. 3101 et seq.;**

13 **(b) Is compensated by an insurer or self-insurer; and**

14 **(c) Investigates, negotiates, or settles property, casualty, or workers'**
 15 **compensation claims for insurers or self-insurers;**

16 ~~(10)~~~~(7)~~ "Insurance producer" means an individual or business entity required to be
 17 licensed under the laws of Kentucky to sell, solicit, or negotiate insurance or
 18 annuity contracts. Insurance producer includes agent, managing general agent,
 19 surplus lines broker, reinsurance intermediary broker and manager, rental vehicle
 20 agent and **rental vehicle agent** managing employee, ~~specialty credit producer and~~
 21 ~~managing employee,~~ and consultant;

22 ~~(11)~~~~(8)~~ "Limited line credit insurance" includes credit life, credit disability, credit
 23 property, credit unemployment, involuntary unemployment, mortgage life, mortgage
 24 guaranty, mortgage disability, guaranteed automobile protection insurance, and any
 25 other form of insurance offered in connection with an extension of credit that is
 26 limited to partially or wholly extinguishing that credit obligation that the executive
 27 director determines should be designated a form of limited line credit insurance;

1 ~~(12)~~~~(9)~~ "Limited line credit insurance agent" means an individual or business entity
 2 who sells, solicits, or negotiates one (1) or more forms of limited line credit
 3 insurance coverage to individuals through a master, corporate, group, or individual
 4 policy;

5 ~~(13)~~~~(10)~~ "Limited lines insurance" means the lines of insurance defined in subsections
 6 ~~(7), (11), (17), (22), and (24)~~~~(5), (8), (14), and (16)~~ of this section and any other
 7 line of insurance that the executive director identifies in accordance with KRS
 8 304.9-230(1)~~(f)~~~~(e)~~ or recognizes for the purpose of complying with KRS 304.9-
 9 140(5);

10 ~~(14)~~~~(11)~~ "Negotiate" means the act of conferring directly with, or offering advice
 11 directly to, a purchaser or prospective purchaser of a particular contract of insurance
 12 concerning any of the substantive benefits, terms, or conditions of the contract,
 13 provided that the person engaged in that act either sells insurance or obtains
 14 insurance from insurers for purchasers. "Negotiate" does not include
 15 negotiating a claims settlement;

16 ~~(15)~~ "Public adjuster" means any person who, for compensation or anything of
 17 value:

18 (a) Acts on behalf of an insured or aids an insured, solely in relation to first-
 19 party claims arising under insurance contracts that insure the real or
 20 personal property of the insured, in negotiating for, or effecting the
 21 settlement of, a claim for loss or damage covered by an insurance contract;

22 (b) Advertises for employment as a public adjuster of insurance claims, solicits
 23 business or represents himself, herself, or itself to the public as a public
 24 adjuster of first-party insurance claims for losses or damages arising out of
 25 policies of insurance that insure real or personal property; or

26 (c) Directly or indirectly solicits business, investigates or adjusts losses, advises
 27 an insured about first-party claims for losses or damages arising out of

policies of insurance that insure real or personal property for another person, or engages in the business of adjusting losses or damages covered by an insurance policy for the insured;

(16) "Rental vehicle agent" means a business entity with a rental vehicle agent managing employee that is licensed to sell, solicit, or negotiate insurance offered, sold, or solicited in connection with, and incidental to, the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, or group agreements that:

(a) Are nontransferable;

(b) Apply only to the rental car that is the subject of the rental agreement; and

(c) Are limited to the following kinds of insurance:

1. Personal accident insurance for renters and other rental car occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

2. Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

3. Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of or damage to personal effects in the rental vehicle during the rental period;

4. Roadside assistance insurance;

5. Emergency sickness protection insurance; or

6. Any other coverage designated by the executive director;

(17) "Rental vehicle insurance" means insurance underwritten by an insurer authorized to transact business in Kentucky that is sold in connection with, and incidental to, a rental vehicle agreement;

1 (18) "Rental vehicle agent managing employee" means an individual who:

2 (a) Is a salaried full-time employee of a licensed rental vehicle agent business
 3 entity that holds a license under Section 16 of this Act; and

4 (b) Is responsible for the supervision of the other employees engaged in the
 5 placement of insurance;

6 (19){(12)} "Sell" means to exchange a contract of insurance by any means, for money or
 7 other valuable consideration, on behalf of an insurer;

8 (20){(13)} "Solicit" means attempting to sell insurance or asking or urging a person to
 9 apply for a particular kind of insurance from a particular insurer;

10 (21) "Staff adjuster" means an individual who is an employee of an insurer who
 11 investigates, negotiates, or settles property, casualty, or workers' compensation
 12 claims on behalf of his or her employer;

13 (22){(14)} "Surety" means insurance or bond that covers obligation to pay the debts of, or
 14 answer for the default of another, including faithlessness in a position of public or
 15 private trust. Surety also includes surety insurance as defined in KRS 304.5-060;

16 (23){(15)} "Terminate" means the cancellation of the relationship between an insurance
 17 producer and the insurer or the termination of an insurance producer's authority to
 18 transact insurance;

19 (24){(16)} "Travel insurance" means insurance coverage for trip cancellation, trip
 20 interruption, baggage, life, sickness and accident, disability, and personal effects if
 21 limited to a specific trip and sold in connection with transportation provided by a
 22 common carrier;

23 (25){(17)} "Uniform business entity application" means the current version of the{
 24 ~~National Association of Insurance Commissioners~~} uniform business entity
 25 application for resident and nonresident business entities; and

26 (26){(18)} "Uniform individual application" means the current version of the{~~National~~
 27 ~~Association of Insurance Commissioners~~} uniform individual application for

1 resident and nonresident individuals.

2 ➔Section 2. KRS 304.9-105 is amended to read as follows:

3 (1) An individual applying for an agent license shall make application to the executive
4 director on the uniform individual application or other application prescribed by the
5 executive director. Before approving the application, the executive director shall
6 find that the applicant:

7 (a) Is at least eighteen (18) years of age;

8 (b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a
9 nonresident who is not eligible to be issued a license in accordance with KRS
10 304.9-140;

11 (c) Has not committed any act that is a ground for denial, suspension, or
12 revocation set forth in KRS 304.9-440;

13 (d) Is trustworthy, reliable, and of good reputation, evidence of which shall be
14 determined through an investigation by the executive director;

15 (e) Is competent to exercise the license and has:

16 1. Except for variable life and variable annuities line of authority and
17 limited lines of authority identified in KRS 304.9-230, completed a
18 prelicensing course of study consisting of forty (40) hours for life and
19 health, forty (40) hours for property and casualty, or twenty (20) hours
20 for each line of authority, as applicable, for which the individual has
21 applied. The executive director shall promulgate administrative
22 regulations to carry out the purpose of this section;

23 2. Except for variable life and variable annuities line of authority and
24 limited lines of authority identified in accordance with KRS 304.9-230,
25 successfully passed the examinations required by the executive director
26 for the lines of authority for which the individual has applied; and

27 3. Paid the fees set forth in KRS 304.4-010; and

1 (f) Is financially responsible to exercise the license and has:

2 1. a. Filed with the executive director the certificate of an insurer
3 authorized to write legal liability insurance in this state, that the
4 insurer has and will keep in effect on behalf of the person a policy
5 of insurance covering the legal liability of the licensed person as
6 the result of erroneous acts or failure to act in his or her capacity as
7 an insurance agent, and enuring to the benefit of any aggrieved
8 party as the result of any single occurrence in the sum of not less
9 than twenty thousand dollars (\$20,000) and one hundred thousand
10 dollars (\$100,000) in the aggregate for all occurrences within one
11 (1) year, and that the policy shall not be terminated unless at least
12 thirty (30) days' prior written notice will have been given to the
13 executive director; or

14 b. Deposited with the executive director cash, or a cash surety bond
15 executed by an insurer authorized to write business in this
16 Commonwealth, in the sum of twenty thousand dollars (\$20,000),
17 which shall be subject to lawful levy of execution by any party to
18 whom the licensee has been found to be legally liable as the result
19 of erroneous acts or failure to act in his or her capacity as an agent;
20 or

21 c. Filed with the executive director on his or her behalf, by an
22 authorized insurer or group of affiliated insurers for which he or
23 she is or is to become an exclusive agent, an agreement whereby
24 the insurer or group of affiliated insurers agrees to assume
25 responsibility, to the benefit of any aggrieved party, for legal
26 liability of the licensed person as the result of erroneous acts or
27 failure to act in his or her capacity as an insurance agent on behalf

1 of the insurer or group of affiliated insurers in the sum of twenty
 2 thousand dollars (\$20,000) for any single occurrence and that the
 3 agreement shall not be terminated until the license is surrendered
 4 to the executive director or at least thirty (30) days' prior written
 5 notice will have been given to the executive director, whichever
 6 shall first occur; and

- 7 2. Agreed with the executive director that if at any time notice is given to
 8 the executive director that any policy filed in accordance with
 9 subparagraph 1.a. of this paragraph, or agreement filed in accordance
 10 with subparagraph 1.c. of this paragraph, is to be terminated and has not
 11 been replaced by another policy or agreement within the time established
 12 by regulations of the executive director, or if any deposit in accordance
 13 with subparagraph 1.b. of this paragraph be reduced through levy of
 14 execution and not replaced by any necessary additional deposit within
 15 the time established by administrative regulations of the executive
 16 director, any and all licenses held by the licensee are
 17 terminated~~revoked~~ and shall be promptly surrendered to the executive
 18 director without demand.

- 19 (2) The executive director may require additional information or submissions from
 20 applicants and may obtain any documents or information reasonably necessary to
 21 verify the information contained in an application.

22 ➔Section 3. KRS 304.9-133 is amended to read as follows:

- 23 (1) A business entity issued a license in accordance with this subtitle, or issued a life
 24 settlement broker or life settlement provider license, shall designate only
 25 individuals to act under the business entity license.
- 26 (2) Each designated individual shall:
- 27 (a) Hold the same kind of license as the business entity;

1 (b) If the business entity license has lines of authority, have one (1) or more of the
2 same lines of authority; and

3 (c) If the individual is designated under an agent license, have at least one (1)
4 appointment with an insurer.

5 (3) The licensed business entity shall file with the executive director:

6 (a) Notice of the designation of an individual within thirty (30) days of the
7 designation; and

8 (b) Notice of termination of designation of an individual within thirty (30) days of
9 the termination of designation.

10 ~~(4) (a) On or before January 31 of each odd-numbered year, each licensed business~~
11 ~~entity shall file with the executive director an annual report of all designated~~
12 ~~individuals whose designations were not terminated on or prior to December~~
13 ~~31 of the preceding calendar year.~~

14 ~~(b) The report shall include each individual licensee's name, identification~~
15 ~~number, and lines of authority the individual is designated to exercise on~~
16 ~~behalf of the business entity.~~

17 ~~(5) The notice and report shall be on a form or in a format prescribed by the executive~~
18 ~~director.~~

19 ~~(6)~~ A licensed business entity shall exercise its~~[the]~~ license only through a designated
20 individual licensee.

21 (a) The business entity shall have for each of its active lines of authority at least
22 one (1) licensed individual with the same line of authority designated with the
23 executive director. If the business entity fails to have at least one (1) licensed
24 individual designated with the executive director for a line of authority, that
25 line of authority shall become inactive; and

26 (b) The business entity shall have at least one (1) licensed individual designated
27 with the executive director at all times. If the business entity fails to have at

1 least one (1) individual designated with the executive director, the business
2 entity license shall terminate and shall be promptly surrendered to the
3 executive director without demand.

4 ~~(5)~~~~(7)~~ An insurer that has appointed the business entity licensee shall be responsible
5 for the acts of each designated individual performed under the business entity's
6 license as if the insurer had appointed the individual licensee.

7 ➔Section 4. KRS 304.9-150 is amended to read as follows:

- 8 (1) Application for a license issued under this subtitle, surplus lines broker license, life
9 settlement broker license, or life settlement provider license shall be made by the
10 applicant. Applications under this subsection shall be certified by the applicant as
11 true, correct, and complete to the best of the applicant's knowledge and belief under
12 penalty of perjury and under penalty of refusal, suspension, or revocation of the
13 license.
- 14 (2) The form of application shall require full answers to any questions as may be
15 reasonably necessary to determine the applicant's identity, residence, personal
16 history, business record, financial responsibility, experience in insurance, purpose
17 for which the license is to be used, and other facts as required by the executive
18 director to determine whether the applicant meets the applicable qualifications for
19 the license applied for.
- 20 (3) The application shall state the kinds of insurance and any applicable lines of
21 authority proposed to be transacted.
- 22 (4) The application of a resident individual shall show whether the applicant is a citizen
23 of the United States. If the applicant is not a citizen of the United States, the
24 applicant shall attach to the application a copy of his or her legal work authorization
25 document.
- 26 (5) The application shall also show whether the applicant was ever convicted of or is
27 currently charged with committing a crime; whether the applicant was ever involved

1 in an administrative proceeding regarding any professional or occupational license;
 2 whether the applicant has a history of not being financially responsible; whether the
 3 applicant has any delinquent tax obligation that is not the subject of a repayment
 4 agreement; whether the applicant is currently charged with or has ever been found
 5 liable of fraud, misappropriation, conversion of funds, misrepresentation, or breach
 6 of fiduciary duty; whether the applicant has child support obligations in arrearage or
 7 is subject to a child support-related subpoena or warrant; and whether the applicant
 8 has ever had a business relationship with an insurer terminated for any alleged
 9 misconduct, and the facts thereof.

10 (6) The executive director may require additional information or submissions from
 11 applicants and may obtain any documents or information reasonably necessary to
 12 verify the information contained in an application.

13 (7) All applications shall be accompanied by:

14 (a) The applicable license fee and examination fee, in the respective amounts
 15 stated in KRS 304.4-010; and[-]

16 (b) Documentation supporting affirmative answers to the questions posed in the
 17 background section[-];

18 ~~(c) If a business entity, certificates issued by the Kentucky Secretary of State~~
 19 ~~demonstrating the business entity is qualified to conduct business in~~
 20 ~~Kentucky; and~~

21 ~~(d) If using an assumed name, copy of any certificate required under KRS~~
 22 ~~365.015].~~

23 (8) An individual designating Kentucky as his or her home state shall submit to the
 24 executive director the applicant's criminal background report from the Kentucky
 25 Administrative Office of the Courts.

26 (9) No applicant for any license shall willfully misrepresent or withhold any fact or
 27 information called for in the application form or in connection therewith.

(10) If the licensee is a business entity, the licensee shall notify the executive director of all changes among its members, directors, officers and other individuals designated in or registered as to the license, within thirty (30) days of such change.

(11) A business entity applicant or licensee shall not be authorized to transact insurance in Kentucky if that applicant or licensee has or uses a name which is the same as, or deceptively similar to, that of another business entity licensee already so authorized.

➔Section 5. KRS 304.9-230 is amended to read as follows:

(1) The executive director may issue, in accordance with KRS 304.9-080, an agent's license with the limited line of authority as follows:

- (a) Surety;
- (b) Travel;
- (c) Limited line credit;
- (d) Crop;~~[-and]~~
- (e) **Rental vehicle; or**

(f) Other limited lines, as specified by the executive director through the promulgation of administrative regulations.

(2) The executive director shall promulgate administrative regulations to establish the requirements, if any, for prelicensing courses of instruction and examination for each limited line of authority.

(3) On and after July 15, 2002, the executive director shall not issue an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance. However, an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance in effect on July 15, 2002, shall continue in effect until surrendered or otherwise terminated in accordance with this subtitle.

➔Section 6. KRS 304.9-260 is amended to read as follows:

1 (1) Each license issued under this subtitle, surplus lines broker license, life settlement
 2 broker license, and life settlement provider license shall continue in force until
 3 expired, suspended, revoked, or otherwise terminated. License renewal fees shall be
 4 received on or before the applicable due date for the license as stated in KRS 304.4-
 5 010. Beginning January 1, 2003, request for renewal shall be on a form or in a
 6 format prescribed by the executive director and made as follows:

7 (a) At least thirty (30) days before the renewal request and fees are due from the
 8 licensee, the office shall make available to each respective licensee a list of his
 9 or her licenses to be renewed during that calendar year. With the licensee's
 10 written consent, an insurer or the licensee's employer may request that the
 11 office send the renewal list to the insurer or to the employer. The office may
 12 distribute the renewal list to the requesting insurer or employer instead of to
 13 the licensee;

14 (b) ~~{Beginning January 31, 2006, }~~In conjunction with license renewal, an
 15 individual holding a resident license for agent, independent or public
 16 adjuster~~{rental vehicle managing employee}~~, and life settlement broker shall
 17 show proof of compliance with continuing education pursuant to KRS 304.9-
 18 295. An individual licensee whose birth date is in an even-numbered year
 19 shall submit the renewal request, continuing education course completion
 20 documentation pursuant to KRS 304.9-295, and fees to the executive director
 21 by the last day of the licensee's birth month in the next even-numbered year
 22 after the date the license is issued, and each subsequent even-numbered year
 23 thereafter;

24 (c) ~~{Beginning January 31, 2006, }~~In conjunction with license renewal, an
 25 individual holding a resident license for agent, independent or public
 26 adjuster~~{rental vehicle managing employee}~~, and life settlement broker shall
 27 show proof of compliance with continuing education pursuant to KRS 304.9-

- 1 295. An individual licensee whose birth date is in an odd-numbered year shall
 2 submit the renewal request, continuing education course completion
 3 documentation pursuant to KRS 304.9-295, and fees to the executive director
 4 by the last day of the licensee's birth month in the next odd-numbered year
 5 after the date the license is issued, and each subsequent odd-numbered year
 6 thereafter;
- 7 (d) A business entity that is issued a license in an even-numbered year shall
 8 submit the renewal request and fees to the executive director by March 31 of
 9 the next even-numbered year, and each subsequent even-numbered year
 10 thereafter; and
- 11 (e) A business entity that is issued a license in an odd-numbered year shall submit
 12 the renewal request and fees to the executive director by March 31 of the next
 13 odd-numbered year, and each subsequent odd-numbered year thereafter.
- 14 (2) (a) Any license referred to in subsection (1) of this section for which the request
 15 for renewal, any required continuing education course completion
 16 documentation, if applicable, and fee are not received by the executive
 17 director shall be deemed to have expired at midnight on the last day of the
 18 birth month for individuals and on March 31 for business entities;
- 19 (b) ~~Any renewal request and fees received by the executive director within thirty~~
 20 ~~(30) days after the expiration date may be accepted with no penalty or~~
 21 ~~interruption in license;~~
- 22 (c) ~~Any renewal request and fees received by the executive director~~ ~~after thirty~~
 23 ~~(30) days from the date of expiration, but~~ within sixty (60) days after the date
 24 of expiration, may be accepted with no interruption in license if accompanied
 25 by a penalty as provided in Subtitle 99 of this chapter; and
- 26 (c) ~~(d)~~ Completion of the required continuing education course, if applicable,
 27 shall be on or before the expiration date, which is deemed as the last day of

the birth month of the licensee during the applicable odd or even year on a biennial basis. Proof of compliance shall be received by the executive director within sixty (60) days after the expiration date.

(3) A licensee who is unable to comply with license renewal procedures due to military service, long-term medical disability, or some other extenuating circumstance may make a written request for a waiver of those procedures. The licensee may also make a written request for a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with these renewal procedures.

(4) As a condition to or in connection with the continuation of any insurance producer license, the executive director may require the licensee to file with him or her information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.

(5) As a condition to or in connection with the continuation of any license, the executive director shall require continuous demonstration of continuing education course completion to sustain the license, and any license shall terminate and be surrendered to the executive director if and when the demonstration becomes impaired.

(6) This section does not apply to temporary licenses issued under KRS 304.9-300, and licensees not licensed for one (1) full year prior to the end of the applicable biennial renewal year.

➔Section 7. KRS 304.9-280 is amended to read as follows:

(1) Subject to the agent contract rights of a rental vehicle agent, rental vehicle managing employee,~~[- specialty credit producer, specialty credit managing employee,]~~ managing general agent, or agent, if any, an insurer may terminate an appointment at any time. However, if any appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission

- 1 as provided in KRS 304.9-270.
- 2 (2) An insurer or authorized representative of the insurer that terminates the
3 appointment, employment, contract, or other insurance business relationship with a
4 licensee shall notify the executive director within thirty (30) days following the
5 effective date of the termination, using a form or a format prescribed by the
6 executive director, if the reason for termination is one (1) of the reasons set forth in
7 KRS 304.9-440 or if the insurer has knowledge the licensee was found by a court,
8 government body, or self-regulatory organization authorized by law to have engaged
9 in any of the activities in KRS 304.9-440. Termination under this subsection shall
10 be deemed termination for cause. Upon the written request of the executive director
11 the insurer shall provide additional information, documents, records, or other data
12 pertaining to the termination or activity of the licensee.
- 13 (3) An insurer or authorized representative of the insurer that terminates the
14 appointment of a licensee for any reason not set forth in subsection (2) of this
15 section, shall notify the executive director within thirty (30) days following the
16 effective date of the termination, using a form or a format prescribed by the
17 executive director. Termination under this subsection shall be deemed termination
18 without~~for~~ cause. Upon written request of the executive director, the insurer shall
19 provide additional information, documents, records, or other data pertaining to the
20 termination.
- 21 (4) The insurer or the authorized representative of the insurer shall promptly notify the
22 executive director in a form or a format acceptable to the executive director if, upon
23 further review or investigation, the insurer discovers additional information that
24 would have been reportable to the executive director in accordance with subsection
25 (2) of this section had the insurer known of its existence.
- 26 (5) (a) Within fifteen (15) days after making the notification required for termination
27 without cause, the insurer shall mail a notice of the termination to the licensee

1 at his or her last known address by first-class mail. The notice of termination
 2 shall include and indicate the reasons for termination provided to the
 3 executive director.

4 (b) Within fifteen (15) days after making the notification required for termination
 5 for cause, the insurer shall provide a copy of the form to the licensee at his or
 6 her last known address by certified mail, return receipt requested, postage
 7 prepaid, or by overnight delivery using a nationally recognized carrier.

8 (c) Within thirty (30) days after the licensee has received a copy of the form, the
 9 licensee may file written comments concerning the substance of the
 10 notification with the executive director. The licensee shall, by the same
 11 means, simultaneously send a copy of the comments to the reporting insurer,
 12 and the comments shall become a part of the executive director's file and
 13 accompany every copy of a report distributed or disclosed for any reason
 14 about the licensee as permitted under subsection (7)(c) of this section.

15 (6) (a) 1. In the absence of actual malice, an insurer, the authorized representative
 16 of the insurer, a licensee, the executive director, or their respective
 17 representatives or employees, or an organization of which the executive
 18 director is a member and that compiles the information and makes it
 19 available to other insurance commissioners or regulatory or law
 20 enforcement agencies, shall not be subject to civil liability, and a civil
 21 cause of action of any nature shall not arise against these individuals,
 22 entities, or their respective representatives or employees as a result of:

23 a. Any statement or information required by or provided in
 24 accordance with this section;

25 b. Any information relating to any statement that may be requested in
 26 writing from an insurer or licensee by the executive director; or

27 c. A statement by a terminating insurer or licensee to an insurer or

licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the executive director.

2. The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.

(b) In any action brought against an individual, business entity, or organization that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the executive director, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.

(c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

(7) (a) 1. Any document, material, or other information in the control or possession of the office that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the executive director in an investigation in accordance with this section:

- a. Shall be confidential by law and privileged;
- b. Shall not be subject to subpoena; or
- c. Shall not be subject to discovery or admissible in evidence in any private civil action.

Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer,

licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the executive director in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.

2. However, the executive director is authorized to use the documents, materials, or other information referred to in paragraph (a)1. of this subsection in the furtherance of any regulatory or legal action brought to carry out the executive director's duties.

(b) Neither the executive director nor any individual who received documents, materials, or other information while acting under the authority of the executive director, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection.

(c) In order to assist in the performance of the executive director's duties, as set forth in KRS 304.2-100, the executive director:

1. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;

2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or

1 subsidiaries, and from regulatory and law enforcement officials of other
 2 foreign or domestic jurisdictions, and shall maintain as confidential or
 3 privileged any documents, materials, or information received with notice
 4 or the understanding that it is confidential or privileged under the laws
 5 of the jurisdiction that is the source of the documents, materials, or
 6 information; and

7 3. May enter into agreements governing sharing and use of information
 8 consistent with this subsection.

9 (d) No waiver of any applicable privilege or claim of confidentiality in the
 10 documents, materials, or information shall occur as a result of disclosure to
 11 the executive director or of sharing as authorized in this subsection.

12 (e) The executive director shall release only final, adjudicated actions including
 13 for-cause terminations that are open to public inspection in accordance with
 14 the Kentucky Open Records Act, KRS 61.870 to 61.884~~], to a database or~~
 15 ~~other clearinghouse service maintained by the National Association of~~
 16 ~~Insurance Commissioners, its affiliates, or subsidiaries].~~

17 (f) As part of the nonresident license certification process, the office shall release
 18 only final adjudicated actions on licensees identified in subsection (1) of this
 19 section.

20 ➔Section 8. KRS 304.9-295 is amended to read as follows:

21 (1) This section shall apply to individuals who hold licenses or lines of authority
 22 requiring continuing education each biennium.

23 (2) ~~[Beginning January 31, 2006,]~~The continuing education biennial compliance date
 24 for an individual resident licensee shall be as follows:

25 (a) A licensee whose birth date is in an even-numbered year shall satisfy
 26 continuing education requirements on or before the last day of the licensee's
 27 birth month in the even-numbered year. A licensee shall show proof of

1 compliance to the executive director within sixty (60) days after the
2 continuing education biennial compliance date. If the licensee has not held the
3 license for one (1) year, the compliance date is adjusted to the next even-
4 numbered year and each subsequent even-numbered year thereafter. If the
5 license becomes inactive and reissued within a twelve (12) month period, the
6 compliance date shall remain the same;

7 (b) A licensee whose birth date is in an odd-numbered year shall satisfy
8 continuing education requirements and show proof of compliance to the
9 executive director on or before the last day of the licensee's birth month in the
10 odd-numbered year. A licensee shall show proof of compliance to the
11 executive director within sixty (60) days after the continuing education
12 biennial compliance date. If the licensee has not held the license for one (1)
13 year, the compliance date is adjusted to the next odd-numbered year and each
14 subsequent odd-numbered year thereafter. If the license becomes inactive and
15 reissued within a twelve (12) month period, the compliance date shall remain
16 the same.

17 (3) This section shall not apply to:

18 (a) Limited lines of authority under agent licenses, as exempted by the executive
19 director in accordance with KRS 304.9-230;

20 (b) Licensees not licensed for one (1) full year prior to the end of the applicable
21 continuing education biennium;

22 (c) Licensees holding nonresident licenses who have met the continuing
23 education requirements of their home state and whose home state gives credit
24 to Kentucky resident licensees on the same basis; or

25 (d) Licensees maintaining their licenses for the sole purpose of receiving renewals
26 or deferred commissions and providing the office with a supporting affidavit.

27 (4) A licensee, who holds an agent license and who is not exempt under subsection (3)

of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which ~~twelve (12) shall be classroom hours and~~ three (3) hours shall have a course concentration in ethics, during each continuing education biennium.

(5) Beginning July 31, 2012, an individual who holds an independent or public adjuster license and who is not exempt under subsection (9) or (10) of Section 11 of this Act, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which three (3) hours shall have a course concentration in ethics in accordance with subsection (4) of this section. Continuing education hours shall be reported to the executive director on a biennial basis in conjunction with the licensee's renewal in accordance with subsection (10) of this section.

(6) Only continuing education courses approved by the executive director shall be used to satisfy the continuing education requirement of subsection (4) of this section and any other continuing education requirement of this chapter.

(a) The continuing education courses which meet the executive director's standards for continuing education requirements are:

1. Any part of the Life Underwriter Training Council life course curriculum;
2. Any part of the Health~~Life~~ Underwriter Training Council health course curriculum;
3. Any part of the American College Chartered Life Underwriter diploma curriculum;
4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
5. Any part of the Insurance Institute of America's programs;

- 1 6. Any part of the certified insurance counselor program;
- 2 7. Any insurance related course taught at an accredited college or
- 3 university, if the course is approved by the executive director;
- 4 8. Any course of instruction or seminar developed or sponsored by any
- 5 authorized insurer, recognized agent association, recognized insurance
- 6 trade association, or any independent program of instruction, if approved
- 7 by the executive director;
- 8 9. Any correspondence course approved by the executive director; and
- 9 10. Any course in accordance with provisions of reciprocal agreements the
- 10 executive director enters with other states.

11 (b) The executive director shall prescribe the number of hours of continuing
 12 education credit for each continuing education course approved in accordance
 13 with this subsection. Continuing education courses submitted in accordance
 14 with a reciprocal agreement shall be approved according to the provisions of
 15 the reciprocal agreement.

16 (c) If a continuing education course requires successful completion of a written
 17 examination, no continuing education credit shall be given to licensees who
 18 do not successfully complete the written examination.

19 (d) The fee for filing continuing education courses for approval by the executive
 20 director shall be as specified in Subtitle 4 of KRS Chapter 304.

21 (e) For continuing education courses of reciprocal states, continuing education
 22 providers shall be approved in accordance with the provisions of the
 23 reciprocal agreements.

24 ~~(7)~~~~(6)}~~ An individual teaching any approved continuing education course shall
 25 qualify for the same number of hours of continuing education credit as would be
 26 granted to a licensee taking and satisfactorily completing the course.

27 ~~(8)~~~~(7)}~~ Excess credit hours accumulated during any continuing education biennium

1 may be carried forward. The executive director may, by regulation, limit the number
2 of hours carried forward.

3 ~~(9)~~~~(8)~~ For good cause shown, the executive director may grant an extension of time
4 during which the continuing education requirement of subsection ~~(2)~~~~(3)~~ of this
5 section may be completed, but the extension of time shall not exceed two (2) years.

6 What constitutes good cause for the extension of time rests within the discretion of
7 the executive director.

8 ~~(10)~~~~(9)~~ Every licensee subject to this section shall furnish to the executive director
9 written certification as to the continuing education courses satisfactorily completed
10 by the licensee. The certification shall be signed by or on behalf of the provider
11 sponsoring the continuing education course. The certification shall be on a form
12 prescribed by the executive director.

13 ~~(11)~~~~(10)~~ The provider shall furnish to the executive director certification as to the
14 continuing education courses satisfactorily completed by each licensee. The
15 certification shall be signed or authenticated by or on behalf of the provider
16 sponsoring the continuing education course. The certification shall be on a form or
17 in a format prescribed by the executive director.

18 ~~(12)~~~~(11)~~ The license or line of authority requiring continuing education shall
19 ~~expire~~~~terminate~~ if the individual holding the license or line of authority fails to
20 comply with the continuing education requirement and has not been granted an
21 extension of time to comply in accordance with subsection ~~(9)~~~~(8)~~ of this section. If
22 the license has ~~expired~~~~terminated~~, the license shall be promptly surrendered to the
23 executive director without demand. If the line of authority has terminated but
24 another line of authority not requiring continuing education is still in effect, the
25 license shall be promptly delivered to the executive director for reissuance as to the
26 line of authority still in effect.

27 ~~(13)~~~~(12)~~ The license of any individual subject to the continuing education requirement

shall be suspended or revoked, a civil penalty imposed, or both, in accordance with KRS 304.9-440, if the individual submits to the executive director a false or fraudulent certificate of compliance with the continuing education requirement.

~~(14)~~~~(13)~~ (a) The executive director may withdraw approval of a continuing education provider, course, or instructor for good and just cause.

(b) In addition to or in lieu of withdrawal of approval, the executive director may impose a civil penalty of not more than one thousand dollars (\$1,000) per violation of this chapter by a provider or an instructor.

➔Section 9. KRS 304.9-421 is amended to read as follows:

No agent, consultant, adjuster, or surplus lines broker shall directly or indirectly share his or her commission or other compensation received or to be received on account of a transaction under his or her license with any individual or business entity not also licensed as agent, consultant, adjuster, or surplus lines broker under this subtitle as to the kinds of insurance involved in the transaction. This provision shall not affect personal use of the commissions or compensation, override commission, payment of the regular salaries due employees of the agent, consultant, adjuster, or surplus lines broker, or distribution in the regular course of business of compensation and profits among members, employees, or stockholders of licensee business entities.

➔Section 10. KRS 304.9-425 is amended to read as follows:

(1) No insurer, financial institution, agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, ~~specialty credit producer or managing employee,~~ life settlement broker or provider, or consultant shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any individual or business entity for services as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, ~~specialty credit producer or managing employee,~~ life settlement broker or provider,

1 or consultant within this state, unless the individual or business entity held at the
 2 time the services were performed a valid license for that line of insurance as
 3 required by the laws of this state for the services.

4 (2) No individual or business entity, other than an individual or business entity duly
 5 licensed by this state as an agent, surplus lines broker, adjuster, administrator,
 6 reinsurance intermediary broker or manager, rental vehicle agent or managing
 7 employee,~~[specialty credit producer or managing employee,]~~ life settlement broker
 8 or provider, or consultant at the time the services were performed, shall accept any
 9 commission, brokerage, or other valuable consideration for those services.

10 (3) This section shall not prevent payment or receipt of renewal or other deferred
 11 commissions to or by any individual or business entity entitled under this section.

12 (4) Services as an agent, surplus lines broker, adjuster, administrator, reinsurance
 13 intermediary broker or manager, rental vehicle agent or managing employee,~~[~~
 14 ~~specialty credit producer or managing employee,~~~~]~~ or consultant within this state
 15 shall not include a referral by an unlicensed person of a consumer to a licensed
 16 agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker
 17 or manager, rental vehicle agent or managing employee,~~[specialty credit producer~~
 18 ~~or managing employee,~~~~]~~ or consultant that does not include a discussion of specific
 19 insurance policy terms and conditions.

20 (5) An insurer, financial institution, agent, surplus lines broker, adjuster, administrator,
 21 reinsurance intermediary broker or manager, rental vehicle agent or managing
 22 employee,~~[specialty credit producer or managing employee,~~~~]~~ or consultant may pay
 23 any compensation, fee, or other consideration to an individual not licensed to sell
 24 insurance for the referral of a consumer to a licensed individual, only if the
 25 consideration is paid regardless of whether the insurance coverage is sold to the
 26 consumer.

27 ➔Section 11. KRS 304.9-430 is amended to read as follows:

1 (1) No ~~person~~~~[individual or business entity]~~ shall in this state act as or hold himself,~~f~~
 2 ~~or~~ herself, or itself out to be an independent, staff, or public adjuster unless then
 3 licensed by the Kentucky Office of Insurance as an independent, staff, or public
 4 adjuster.~~[Application for license shall be made to the executive director according~~
 5 ~~to forms as prescribed and furnished by him or her. The executive director shall~~
 6 ~~issue the license as to applicants qualified upon payment of the license application~~
 7 ~~fee stated in KRS 304.4-010.]~~

8 (2) An individual applying for a resident independent, staff, or public adjuster
 9 license shall make application to the executive director on the appropriate
 10 uniform individual application and in a format prescribed by the executive
 11 director. The applicant shall declare under penalty of suspension, revocation, or
 12 refusal of the license that the statements made in the application are true, correct,
 13 and complete to the best of the individual's knowledge and belief. Before
 14 approving the application, the executive director shall find that the individual to
 15 be licensed:

- 16 (a) Is at least eighteen (18) years of age;
- 17 (b) Is eligible to designate Kentucky as his or her home state;
- 18 (c) Is trustworthy, reliable, and of good reputation, evidence of which shall be
 19 determined through an investigation by the executive director;
- 20 (d) Has not committed any act that is a ground for probation, or suspension,
 21 revocation, or refusal of a license as set forth in KRS 304.9-440;
- 22 (e) Has successfully passed the examination for the adjuster license and the
 23 applicable line of authority for which the individual has applied;
- 24 (f) Has paid the fees established by the executive director pursuant to KRS
 25 304.4-010; and
- 26 (g) Is financially responsible to exercise the license.

27 (3) (a) To demonstrate financial responsibility, a person applying for a public

adjuster license shall obtain a bond or irrevocable letter of credit prior to issuance of a license and shall maintain the bond or letter of credit for the duration of the license. The applicant shall provide evidence of financial responsibility in a format prescribed by the executive director with the following limits:

1. A surety bond executed and issued by an insurer authorized to issue surety bonds in Kentucky, which bond shall:

a. Be in the minimum amount of twenty thousand dollars (\$20,000);

b. Be in favor of the state of Kentucky and shall specifically authorize recovery by the executive director on behalf of any person in Kentucky who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair trade practices in his or her capacity as a public adjuster; and

c. Not be terminated unless written notice is filed with the executive director and given to the licensee at least thirty (30) days prior to the termination; or

2. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit shall:

a. Be in the minimum amount of twenty thousand dollars (\$20,000);

b. Be to an account of the executive director and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair practices in his or her capacity as a public adjuster;

1 and

2 c. Not be terminated unless written notice is filed with the executive
 3 director and given to the licensee at least thirty (30) days prior to
 4 the termination.

5 (b) The issuer of the evidence of financial responsibility shall notify the
 6 executive director upon termination of the bond or letter of credit, unless
 7 otherwise directed by the executive director.

8 (c) The executive director may ask for evidence of financial responsibility at
 9 any time he or she deems relevant.

10 (d) The public adjuster license shall automatically terminate if the evidence of
 11 financial responsibility terminates or becomes impaired and shall be
 12 promptly surrendered to the executive director without demand. ~~[To be~~
 13 ~~licensed as an adjuster the applicant shall:~~

14 ~~(a) Be an individual twenty one (21) years or more of age;~~

15 ~~(b) Be a resident of Kentucky, or resident of another state which will permit~~
 16 ~~residents of Kentucky to act as adjusters in the other state;~~

17 ~~(c) Be an employee of an insurer, a full time salaried employee of a licensed~~
 18 ~~adjuster or a graduate of a recognized law school, or have experience or~~
 19 ~~special education or training as to the handling of loss claims under insurance~~
 20 ~~contracts of sufficient duration and extent to make him or her reasonably~~
 21 ~~competent to fulfill the responsibilities of an adjuster;~~

22 ~~(d) Be trustworthy and of good reputation;~~

23 ~~(e) Have and maintain an office accessible to the public, and keep therein the~~
 24 ~~usual and customary records pertaining to transactions under the license. This~~
 25 ~~provision shall not be deemed to prohibit maintenance of the office in the~~
 26 ~~office of an insurer, of the employer, or in the home of the licensee;~~

27 ~~(f) Have successfully passed a written examination prescribed by the executive~~

1 director, except if the applicant has successfully passed a written examination
 2 in a state which permits residents of Kentucky to act as adjusters in the other
 3 state; and

4 ~~(g) Be financially responsible to exercise the license.]~~

5 ~~(4)~~~~(3)~~ A business entity applying for a resident independent or public adjuster
 6 license shall make application to the executive director on the appropriate
 7 uniform business entity application and in a format prescribed by the executive
 8 director. The applicant shall declare under penalty of suspension, revocation, or
 9 refusal of the license that the statements made in the application are true, correct,
 10 and complete to the best of the business entity's knowledge and belief. Before
 11 approving the application, the executive director shall find that the business
 12 entity:

13 (a) Is eligible to designate Kentucky as its home state;

14 (b) Has designated a licensed independent or public adjuster responsible for the
 15 business entity's compliance with the insurance laws and regulations of
 16 Kentucky;

17 (c) Has not committed an act that is a ground for probation or suspension,
 18 revocation, or refusal of an independent or public adjuster's license as set
 19 forth in KRS 304.9-440; and

20 (d) Has paid the fees established by the executive director pursuant to KRS
 21 304.4-010~~[, whether or not organized under the laws of this state, may be~~
 22 ~~licensed as an adjuster if each individual who is to exercise the license powers~~
 23 ~~is designated with the executive director as to the license in accordance with~~
 24 ~~KRS 304.9-133].~~

25 ~~(5)~~~~(4)~~ The executive director may require additional information or submissions
 26 from applicants and may obtain any documents or information reasonably necessary
 27 to verify the information contained in an application.

(6) Unless denied licensure pursuant to KRS 304.9-440, a person or business entity who has met the requirements of subsections (2) to (5) of this section shall be issued an independent, staff, or public adjuster license.

(7) An independent or staff adjuster may qualify for a license in one (1) or more of the following lines of authority:

(a) Property and casualty;

(b) Workers' compensation; or

(c) Crop.

(8) A public adjuster may qualify for a license in one (1) or more of the following lines of authority:

(a) Property and casualty; or

(b) Crop.

(9) Notwithstanding any other provision of this subtitle, a license as an independent adjuster shall not be required of the following:

(a) An individual who is sent into Kentucky on behalf of an insurer for the sole purpose of investigating or making adjustment of a particular loss resulting from a catastrophe, or for the adjustment of a series of losses resulting from a catastrophe common to all losses;

(b) An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;

(c) A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;

(d) An individual who is employed to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments;

(e) A person who solely performs executive, administrative, managerial, or clerical duties, or any combination thereof, and who does not investigate,

negotiate, or settle claims with policyholders, claimants, or their legal representatives;

(f) A licensed health care provider or its employee who provides managed care services as long as the services do not include the determination of compensability;

(g) A health maintenance organization or any of its employees or an employee of any organization providing managed care services as long as the services do not include the determination of compensability;

(h) A person who settles only reinsurance or subrogation claims;

(i) An officer, director, manager, or employee of an authorized insurer, surplus lines insurer, or risk retention group, or an attorney-in-fact of a reciprocal insurer;

(j) A United States manager of the United States branch of an alien insurer;

(k) A person who investigates, negotiates, or settles claims arising under a life, accident and health, or disability insurance policy or annuity contract;

(l) An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer;

(m) A licensed agent, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer, to whom claim authority has been granted by the insurer; or

(n) A person who:

1. Is an employee of a licensed independent adjuster or an employee of an affiliate that is a licensed independent adjuster or is supervised by a licensed independent adjuster, if there are no more than twenty-five (25) persons under the supervision of one (1) licensed individual independent adjuster or licensed agent who is exempt from licensure, pursuant to subsection (9)(m) of this section;

1 2. Collects claim information from insureds or claimants;

2 3. Enters data into an automated claims adjudication system; and

3 4. Furnishes claim information to insureds or claimants from the results
 4 of the automated claims adjudication system.

5 For purposes of this paragraph, "automated claims adjudication system"
 6 means a preprogrammed computer system designed for the collection, data
 7 entry, calculation, and system-generated final resolution of consumer
 8 electronic products insurance claims that complies with claim settlement
 9 practices pursuant to Subtitle 12 of KRS Chapter 304.

10 (10) Notwithstanding any other provision of this subtitle, a license as a public adjuster
 11 shall not be required of the following:

12 (a) An attorney licensed to practice law in Kentucky, when acting in his or her
 13 professional capacity as an attorney;

14 (b) A person who negotiates or settles claims arising under a life or health
 15 insurance policy or an annuity contract;

16 (c) A person employed only for the purpose of obtaining facts surrounding a
 17 loss or furnishing technical assistance to a licensed public adjuster,
 18 including photographers, estimators, private investigators, engineers, and
 19 handwriting experts; or

20 (d) A licensed health care provider or its employee who prepares or files a
 21 health claim form on behalf of a patient.

22 (11) For purposes of this section, "home state" means any state or territory of the
 23 United States or the District of Columbia in which an independent, staff, or
 24 public adjuster maintains his, her, or its principal place of residence or business
 25 and is licensed to act as a resident independent, staff, or public adjuster. If the
 26 state of the principal place of residence does not license an independent, staff, or
 27 public adjuster for the line of authority sought, the independent, staff, or public

1 adjuster shall designate as his, her, or its home state, any state in which the
 2 independent or public adjuster is licensed and in good standing.

3 (12) Temporary registration for emergency independent or staff adjusters shall be
 4 issued by the executive director in the event of a catastrophe declared in Kentucky
 5 in the following manner:

6 (a) An insurer shall notify the executive director by submitting an application
 7 for temporary emergency registration of each individual not already
 8 licensed in the state where the catastrophe has been declared, who will act
 9 as an emergency independent adjuster on behalf of the insurer;

10 (b) A person who is otherwise qualified to adjust claims, but who is not already
 11 licensed in the state, may act as an emergency independent or staff adjuster
 12 and adjust claims if, within five (5) days of deployment to adjust claims
 13 arising from the catastrophe, the insurer notifies the executive director by
 14 providing the following information, in a format prescribed by the executive
 15 director:

16 1. The name of the individual;

17 2. The Social Security number of the individual;

18 3. The name of the insurer that the independent or staff adjuster
 19 will represent;

20 4. The catastrophe or loss control number;

21 5. The catastrophe event name and date; and

22 6. Any other information the executive director deems necessary;
 23 and

24 (c) An emergency independent or staff adjuster's registration shall remain in
 25 force for a period not to exceed ninety (90) days, unless extended by the
 26 executive director.

27 (13) (a) Unless refused licensure in accordance with KRS 304.9-440, a nonresident

person shall receive a nonresident independent, staff, or public adjuster license if:

1. The person is currently licensed in good standing as an independent, staff, or public adjuster in his, her, or its home state;
2. The person has submitted the proper request for licensure, and has paid the fees required by KRS 304.4-010;
3. The person has submitted, in a form or format prescribed by the executive director, the uniform individual application; and
4. The person's designated home state issues nonresident independent, staff, or public adjuster licenses to persons of Kentucky on the same basis.

(b) The executive director may verify the independent, staff, or public adjuster's licensing status through any appropriate database or may request certification of good standing.

(c) As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his, her, or its home state.

(d) The nonresident adjuster license issued under this section shall terminate and be surrendered immediately to the executive director if the resident adjuster license terminates for any reason, unless the termination is due to the adjuster being issued a new resident independent or public adjuster license in his, her, or its new home state. If the new resident state does not have reciprocity with Kentucky, the nonresident adjuster license shall terminate.

(14) An individual applying for a nonresident independent, staff, or public adjuster license in Kentucky shall be allowed one hundred eighty (180) days from the effective date of this Act to establish a home state. This subsection shall expire

1 two (2) years from the effective date of this Act.

2 ~~[(5) Notwithstanding the provisions of this section, no adjuster's license or qualifications~~
 3 ~~shall be required as to any adjuster who is sent into this state on behalf of an insurer~~
 4 ~~for the purpose of investigating or making adjustment of a particular loss under an~~
 5 ~~insurance policy, or for the adjustment of a series of losses resulting from a~~
 6 ~~catastrophe common to all losses.]~~

7 ➔SECTION 12. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304
 8 IS CREATED TO READ AS FOLLOWS:

9 (1) A public adjuster shall ensure that all contracts between the public adjuster and
 10 the insured for services are in writing and contain the following terms:

11 (a) The legible full name of the adjuster signing the contract, as specified in the
 12 Office of Insurance licensing records;

13 (b) The permanent home state business address and phone number;

14 (c) The Office of Insurance license number;

15 (d) A title of "Public Adjuster Contract";

16 (e) The insured's full name, street address, insurer name, and policy number, if
 17 known or upon notification;

18 (f) A description of the loss and its location, if applicable;

19 (g) A description of services to be provided to the insured;

20 (h) The signatures of the public adjuster and the insured;

21 (i) The date the contract was signed by the public adjuster and the date the
 22 contract was signed by the insured;

23 (j) Attestation language stating that the public adjuster has a letter of credit or
 24 a surety bond as required by subsection (3) of Section 11 of this Act; and

25 (k) The full salary, fee, commission, compensation, or other considerations the
 26 public adjuster is to receive for services; and

27 (2) Any contract that specifies that the public adjuster shall be named as a co-payee

1 on an insurer's payment of a claim is permitted provided that:

2 (a) If the compensation is based on a share of the insurance settlement, the
3 exact percentage shall be specified;

4 (b) Initial expenses to be reimbursed to the public adjuster from the proceeds of
5 the claim payment shall be specified by type, with dollar estimates set forth
6 in the contract and with any additional expenses, if first approved by the
7 insured; and

8 (c) Compensation provisions in a public adjuster contract shall not be redacted
9 in any copy of the contract provided to the executive director. Such a
10 redaction shall constitute an omission of material fact in violation of KRS
11 304.9-440 and 304.12-230.

12 (3) If the insurer, not later than seventy-two (72) hours after the date on which the
13 loss is reported to the insurer, either pays or commits in writing to pay to the
14 insured the policy limit of the insurance policy, the public adjuster shall:

15 (a) Not receive a commission consisting of a percentage of the total amount
16 paid by an insurer to resolve a claim;

17 (b) Inform the insured that the claim settlement amount may not be increased
18 by the insurer; and

19 (c) Be entitled only to reasonable compensation from the insured for services
20 provided by the public adjuster on behalf of the insured, based on the time
21 spent on a claim and expenses incurred by the public adjuster, until the
22 claim is paid or the insured receives a written commitment to pay from the
23 insurer.

24 (4) A public adjuster shall provide the insured with a written disclosure concerning
25 any direct or indirect financial interest that the public adjuster has with any other
26 party who is involved in any aspect of the claim, other than the salary, fee,
27 commission, or other consideration established in the written contract with the

insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. For purposes of this subsection, "firm" includes any corporation, partnership, association, joint-stock company, or person.

(5) A public adjuster contract may not contain any contract term that:

(a) Allows the public adjuster's percentage fee to be collected when money is due from an insurer, but not paid; or allows a public adjuster to collect the entire fee from the first check issued by an insurer, rather than as a percentage of each check issued by an insurer;

(b) Requires the insured to authorize an insurer to issue a check only in the name of the public adjuster;

(c) Imposes collection costs or late fees; or

(d) Precludes a public adjuster from pursuing civil remedies.

(6) Prior to the signing of the contract, a public adjuster shall provide the insured with a separate disclosure document regarding the claim process that shall state the following:

"Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. Three (3) types of adjusters may be involved in the claim process as follows:

1. "Staff adjuster" means an insurance adjuster who is an employee of an insurance company who represents the interest of the insurance company and who is paid by the insurance company. A staff adjuster shall not charge a fee to the insured;

2. "Independent adjuster" means an insurance adjuster who is hired on

a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claims and who is paid by the insurance company. An independent adjuster shall not charge a fee to the insured; and

3. "Public adjuster" means an insurance adjuster who does not work for any insurance company. A public adjuster works for the insured to assist in the preparation, presentation, and settlement of the claim, and the insured hires a public adjuster by signing a contract agreeing to pay him or her a fee or commission based on a percentage of the settlement or other method of payment.

The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to hire a public adjuster. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, and any other person regarding the settlement of the insured's claim. The public adjuster shall not be a representative or employee of the insurer. The salary, fee, commission, or other consideration paid to the public adjuster is the obligation of the insured, not the insurer."

(7) The contract between the public adjuster and the insured shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection by the executive director without notice.

(8) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(9) The public adjuster shall give the insured written notice of the insured's rights as provided in this section.

(10) The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract and postmarked or received within the three (3) business day period.

(11) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract shall be returned to the insured within fifteen (15) business days following receipt by the public adjuster of the rescission notice.

(12) A public adjuster who receives, accepts, or holds any funds on behalf of an insured toward the settlement of a claim for loss or damage shall deposit the funds in a noninterest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

→SECTION 13. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:

(a) The name of the insured;

(b) The date, location, and amount of the loss;

(c) A copy of the contract between the public adjuster and insured;

(d) The name of the insurer and the amount, expiration date, and number of each policy carried with respect to the loss;

(e) An itemized statement of the insured's recoveries;

(f) An itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

(g) A register of all money received, deposited, disbursed, or insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest-bearing accounts;

- 1 (h) The name of the public adjuster who executed the contract;
 2 (i) The name of the attorney representing the insured, if applicable, and the
 3 name of the claims representatives of the insurer; and
 4 (j) Evidence of financial responsibility, in a format prescribed by the executive
 5 director.
- 6 (2) An independent adjuster shall maintain a copy of each contract between the
 7 independent adjuster and the insurer or self-insurer and comply with the record
 8 retention policy as agreed to in the contract.
- 9 (3) Records shall be maintained by a public adjuster for at least five (5) years after
 10 the termination of a transaction with an insured and shall be open to
 11 examination by the executive director at all times.

12 ➔Section 14. KRS 304.9-432 is amended to read as follows:

- 13 (1) In the event that an applicant for an adjuster's license meets the qualification
 14 requirements of KRS 304.9-430 except that he or she has not had experience or
 15 special education or training as to the handling of loss claims under insurance
 16 contracts of sufficient duration and extent to make him or her reasonably confident
 17 to fulfill the responsibilities as an adjuster, he or she shall not be required to take
 18 and successfully complete the prescribed written examination and may be issued a
 19 temporary license as an apprentice adjuster for a period not to exceed twelve (12)
 20 months.
- 21 (2) A temporary license as an apprentice adjuster shall be subject to the following terms
 22 and conditions:
- 23 (a) An individual holding a temporary license as apprentice adjuster shall have all
 24 of the privileges and obligations of an adjuster licensed under the insurance
 25 code;
- 26 (b) An individual holding a temporary license as an apprentice adjuster shall at all
 27 times be a full-time salaried employee of an insurer or an adjuster and subject

1 to training, direction, and control by a licensed adjuster acting in the same
2 capacity as that for which the applicant applied;

3 (c) A temporary license as apprentice adjuster shall be subject to suspension,
4 revocation, or conditions in accordance with KRS 304.9-440; and

5 (d) An individual may hold only one (1) temporary license as an apprentice
6 adjuster.

7 (3) An individual applying for a resident apprentice adjuster license shall make
8 application to the executive director on the appropriate uniform individual
9 application, in a format prescribed by the executive director, and declare under
10 penalty of suspension, revocation, or refusal of the license that the statements
11 made in the application are true, correct, and complete to the best of the
12 individual's knowledge and belief. Before approving the application, the
13 executive director shall determine whether the applicant:

14 (a) Is at least eighteen (18) years of age;

15 (b) Is a resident of Kentucky and has designated Kentucky as his or her home
16 state;

17 (c) Has a business or mailing address in the state for acceptance of service of
18 process;

19 (d) Has not committed any act that is a ground for probation, or suspension,
20 revocation, or denial of licensure as set forth in KRS 304.9-440;

21 (e) Is trustworthy, reliable, and of good reputation, evidence of which may be
22 determined by the executive director;

23 (f) Has paid the fees prescribed by administrative regulation promulgated
24 pursuant to KRS 304.4-010; and

25 (g) Has provided an attestation from a licensed independent, staff, or public
26 adjuster with the same line of authority for which the apprentice has
27 applied, attesting that the apprentice adjuster shall be subject to training,

direction, and control by the licensed adjuster, and further certifying that the licensed adjuster assumes responsibility for the actions of the apprentice in the apprentice's capacity as an adjuster.

(4) The apprentice adjuster license shall be subject to the following terms and conditions:

(a) The apprentice adjuster shall only be authorized to adjust claims in the state that has issued the apprentice adjuster license;

(b) The apprentice adjuster shall be restricted to participation in the investigation, settlement, and negotiation of claims subject to the review and final determination of the claim by the supervising licensed adjuster;

(c) Compensation of an apprentice adjuster shall be on a salaried or hourly basis only;

(d) The apprentice adjuster shall not be required to pass the independent or public adjuster examination, as required by subsection (2) of Section 11 of this Act, to adjust claims as an apprentice adjuster. At any time during the apprenticeship, the apprentice adjuster may choose to take the examination required by subsection (2) of Section 11 of this Act and, if he or she passes the examination, the apprentice adjuster license shall automatically terminate and an adjuster license shall be issued to that individual in place thereof; and

(e) The apprentice adjuster license shall be for a time period not to exceed twelve (12) months and is nonrenewable.

(5) The licensed independent, staff, or public adjuster responsible for the apprentice adjuster shall only supervise the activities of the apprentice adjuster as set forth in this subtitle.

➔Section 15. KRS 304.9-436 is amended to read as follows:

(1) An authorized insurer shall not do business in Kentucky with an adjuster who is

1 unlicensed in violation of KRS~~[304.9-070 and]~~ 304.9-080 **and Section 11 of this**
 2 **Act**. This section shall not apply to transactions between an authorized insurer and
 3 persons providing adjusting services pursuant to **subsections (9), (10), and (12) of**
 4 **Section 11 of this Act**~~[KRS 304.9-070(1), (2), (3), (4) or (5) or 304.9-430(5)]~~.

5 (2) An authorized insurer shall not do business in Kentucky with an administrator who
 6 is not licensed in accordance with KRS 304.9-052. This subsection shall not apply
 7 to transactions between an authorized insurer and persons providing administrator
 8 services pursuant to KRS 304.9-051.

9 ➔Section 16. KRS 304.9-505 is amended to read as follows:

10 (1) A license issued under this section shall permit rental vehicle insurance sales by the
 11 license holder provided the sales are conducted in accordance with the provisions of
 12 KRS 304.9-507.

13 (2) A business entity licensee shall register with the executive director each separate
 14 business location where its employees sell, solicit, or negotiate insurance and may
 15 pay a location registration fee for each separate location.

16 (3) **A rental vehicle agent managing employee with an active license issued by the**
 17 **executive director shall oversee employees at each assigned location.**

18 (4) The executive director may issue to **a business entity**~~[an applicant]~~ qualified under
 19 this section a license to act as a rental vehicle agent.

20 ~~(5)~~~~(4)~~ For a license to be issued under this section, the **business entity**~~[applicant]~~
 21 shall submit to the executive director all of the following:

22 (a) A written application, signed by the **authorized representative of the business**
 23 **entity**~~[applicant]~~, on a form prescribed by the executive director, that contains
 24 the information prescribed by the executive director;

25 (b) **Satisfaction of all general agent licensing requirements as prescribed in**
 26 **subsections (1)(c) and (2) of Section 2 of this Act**~~[A certification by an~~
 27 ~~insurer authorized to do business in this state, signed, and affirmed as true~~

1 under penalty of perjury by an officer stating that:

2 1. ~~The insurer has satisfied itself that the named applicant is trustworthy~~
 3 ~~and competent to act as the insurer's agent; and~~

4 2. ~~The insurer has appointed the applicant to act as agent for the type of~~
 5 ~~insurance specified];~~

6 (c) The application fee, appointment fee, and location registration fee as provided
 7 in KRS 304.4-010 ~~and KRS 304.9-501 to 304.9-513];~~

8 (d) A business entity applicant shall submit a list of physical locations where
 9 activities authorized by the rental vehicle agent license will be conducted; and

10 (e) A business entity applicant shall ensure~~certify~~ that each proposed licensed
 11 managing employee has successfully completed a prelicensing course of
 12 study and~~education and training programs,~~ successfully passed a rental
 13 vehicle examination~~course examinations, and will receive continuing~~
 14 ~~education all]~~ approved by the executive director ~~in accordance with KRS~~
 15 ~~304.9-513; and~~

16 (f) ~~A business entity applicant shall submit proof that the applicant will provide~~
 17 ~~education, training, and continuing education approved by the executive~~
 18 ~~director in accordance with KRS 304.9-513 for each rental vehicle employee~~
 19 ~~or representative. However, a test shall not be required for each rental vehicle~~
 20 ~~employee or representative who is not a licensed managing employee].~~

21 ~~(6)~~~~(5)~~ The executive director may require any documents reasonably necessary to
 22 verify the information contained in the application submitted in accordance with
 23 subsection ~~(5)~~~~(4)~~ of this section.

24 ➔Section 17. KRS 304.9-507 is amended to read as follows:

25 (1) A license issued to a business entity under KRS 304.9-505 shall authorize an
 26 employee or representative of the business entity licensee to sell, solicit, or
 27 negotiate rental vehicle insurance without being licensed, registered, or otherwise

1 individually identified, if all of the following are true:

- 2 (a) The employee, representative, or managing employee operates with
- 3 permission from the business entity licensee;
- 4 (b) The business entity licensee assumes responsibility for the insurance activities
- 5 of its unlicensed employees, ~~or~~ representatives, or managing employees;
- 6 (c) The employee or representative operates under the supervision of a managing
- 7 employee who is licensed as a rental vehicle agent and who shall be available
- 8 at all times for consultation for and adequate supervision of the business
- 9 locations registered with the executive director during the sale, solicitation, or
- 10 negotiation of rental vehicle insurance. However, a managing employee need
- 11 not be present at each business location registered with the executive director;
- 12 (d) The business entity maintains an adequate number of managing employees
- 13 available for consultation and supervision for the employees or representatives
- 14 offering insurance products;
- 15 (e) The employee, representative, or managing employee has been instructed by
- 16 the rental vehicle agent with respect to the consumer disclosures that are
- 17 required under KRS 304.9-509 prior to the sale of the rental vehicle insurance;
- 18 (f) The employee or representative is not primarily compensated based on the
- 19 amount of insurance sold by the employee or representative; and
- 20 (g) The business location is registered with the executive director.

21 (2) A licensee shall not advertise, represent, or otherwise hold out the licensee or any
 22 employee or representative of the licensee as a licensed insurance agent under
 23 another section of this subtitle, unless the entity or individual actually holds the
 24 applicable license.

25 ➔Section 18. KRS 304.9-509 is amended to read as follows:

26 Rental vehicle insurance shall not be transacted under this subtitle ~~[KRS 304.9-501 to~~
 27 ~~304.9-513]~~ at any location unless the following consumer protection disclosures are made

1 in writing that meets the readability standards set forth in KRS 304.14-440 and the
 2 regulations promulgated thereunder prior to the sale of rental vehicle insurance and are
 3 included with the rental vehicle agreement:

- 4 (1) A clear and concise description of the material terms and conditions of the
 5 coverage, including a description of exclusions;
- 6 (2) A description of the process for filing a claim and a toll-free telephone number for
 7 reporting a claim;
- 8 (3) A statement that the coverage offered by the rental vehicle agent may be a
 9 duplication of coverage already provided by the renter's personal automobile
 10 insurance policy or by another source of coverage;
- 11 (4) A statement that the renter is not required to purchase any insurance from the rental
 12 vehicle company in order to rent a vehicle. However, the rental vehicle company
 13 may refuse to rent a vehicle to an uninsured driver;
- 14 (5) The name and address of the underwriting insurer;
- 15 (6) A separate itemization of all costs for the rental vehicle insurance;
- 16 (7) Confirmation that the insurer underwriting coverage is authorized to transact
 17 insurance in Kentucky; and
- 18 (8) A statement that the rental vehicle insurance is primary coverage over any other
 19 coverage which may be available to the renter or authorized driver covering the
 20 same loss~~[as set forth in KRS 304.9-503(2)]~~.

21 ➔Section 19. KRS 304.12-100 is amended to read as follows:

22 Nothing in KRS 304.12-080, 304.12-090, or 304.12-110 shall be construed as
 23 prohibiting:

- 24 (1) Payment of lawfully earned commission or other lawful compensation to duly
 25 licensed insurance producers as defined in KRS 304.9-020~~(10)~~~~(7)~~ or
 26 compensation disclosed in a written disclosure agreement as described in KRS
 27 304.11-042;

- 1 (2) Distribution by a participating insurer to its participating policyholders of dividends,
2 savings, or the unused or unabsorbed portion of premiums and premium deposits;
- 3 (3) Furnishing of information, advice, programs, or services that are intended to reduce
4 the future cost of insurance of the policyholder or the probability or severity of loss
5 and assist in the efficient administration and management of the policyholder's
6 insurance program or to assist the client in complying with any state or federal law.
7 Such services shall include but are not limited to providing software to administer
8 an insured's employee benefits or risk management programs, employee wellness
9 programs, risk management services, loss control services, workers' compensation
10 analysis forecasting, or any other service designed to assist in the efficient
11 administration of a policyholder's insurance program;
- 12 (4) Life insurers from paying bonuses to policyholders or otherwise abating their
13 premiums in whole or in part out of surplus accumulated from nonparticipating
14 insurance, if such bonus or abatement is fair and equitable to all policyholders and
15 for the best interests of the insurer and its policyholders;
- 16 (5) In the case of insurance policies issued on the debit plan, making allowance to
17 policyholders who have continuously for a specified period made premium
18 payments directly to an office of the insurer in an amount which fairly represents
19 the savings in collection expense or making allowance to policyholders who make
20 premium payments at less frequent intervals than required;
- 21 (6) Readjustment of the rate of premium for a group insurance policy based on the loss
22 or expense experience thereunder, at the end of any policy year of insurance
23 thereunder, which may be made retroactive only for such policy year; or
- 24 (7) An insurer from waiving, in whole or in part, a policyholder's deductible for food
25 spoilage for an insured risk located in a county declared to be a federal disaster area.

26 ➔Section 20. KRS 304.12-110 is amended to read as follows:

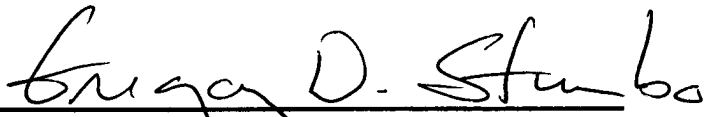
27 No insurer, insurance producer as defined in KRS 304.9-020(10){(7)}, or other person

1 shall, as an inducement to insurance, or in connection with any insurance transaction,
 2 provide in any policy for, or offer, sell, buy, or offer or promise to buy, sell, give,
 3 promise, or allow to the insured or prospective insured or to any other person on his
 4 behalf in any manner whatsoever:

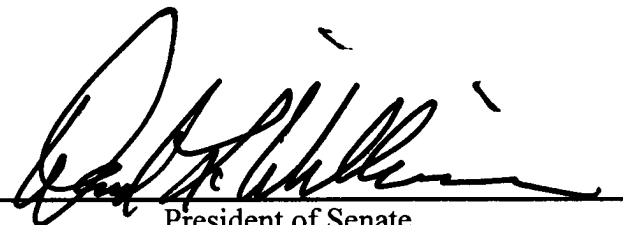
- 5 (1) Any employment;
- 6 (2) Any shares of stock or other securities issued or at any time to be issued or any
 7 interest therein or rights thereto;
- 8 (3) Any advisory board contract, or any similar contract, agreement or understanding,
 9 offering, providing for, or promising any profits or special returns or special
 10 dividends; or
- 11 (4) Any prizes, goods, wares, merchandise, or property of an aggregate value in excess
 12 of twenty-five dollars (\$25).

13 ➔Section 21. The following KRS sections are repealed:

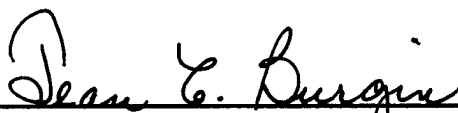
- 14 304.9-070 "Adjuster" defined.
- 15 304.9-485 Licensing of specialty credit insurance producers -- Authorization of
 16 employees or representatives -- Rights and limitations.
- 17 304.9-501 Definitions for KRS 304.9-501 to 304.9-513.
- 18 304.9-503 Types of insurance that rental vehicle agent may handle at company office --
 19 Coverage is primary over other coverage.
- 20 304.9-513 Penalties -- Educational materials to be provided to executive director --
 21 Commissions and other compensation -- Renewal of licenses -- Administrative
 22 regulations.



Speaker House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 
